

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4183 of 2023

=====

M/s Astha and Saumya Construction At P.O.- Bhairwar, District- Begusarai, through its Partner Sunil Kumar, male, aged about 45 years, S/o- Chandra Bhushan Prasad Singh, R/o- Bhairwar, Ward No.- 03, P.O. and P.S.- Bhairwar, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in- Chief, Flood Control and Drainage, Government of Bihar, Patna.
4. The Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur.
5. The Superintending Engineer Planning and Monitoring Circle- 3, Water Resources Department, Bihar, Patna.
6. The Superintending Engineer, Irrigation Circle, Bhagalpur.
7. The Executive Engineer, Ganga Pump Canal Division, Shivnarayanpur, Bhagalpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Alok Ranjan, Advocate.

For the Respondent/s : Mr. Vinay Kirti Singh, GA-2 with
Mr. Sumant Kumar Singh, AC to GA-2.

=====

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

CAV JUDGMENT

Date: 18-12-2023

Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the
following reliefs:-

“(i)For directing and commanding the responding authorities to foreclose the agreement bearing agreement no 01 SDB/ 2017-18 namely Remaining Earth Work and



Structure IN Kashri Distributary From R.D 0.00 to 22.225, pursuant to their decision taken vide memo no. 157 dated 04.03.2020, moreover, till date neither the land is available for performing the work, nor the land owners are allowing to carry out the work and due to passage of long time the price of labor, material and due to introduction of new system of taxation GST the cost has increased leaps and bounds.

(ii) For directing and commanding the responding authorities for making payment of the work done by the petitioner, final measurement was done on 13.03.2020 to 14.03.2020 by respondent authorities but till date payment has not been made.

(iii) For further directing and commanding the respondent authorities for making payment of the work done by the petitioner taking into consideration the fact that pursuant to policy decision of the Central Government, estimate for the work was prepared at VAT rate but after 2017 GST came into force and rate of GST has been increased from 12% to 18%. And also considering the fact that now provision of GST is applicable.

(iv) For directing and commanding the responding authorities making payment of security deposit and amount of 8% deducted from running of account bills pursuant to agreement no. 01 SBD/2017-18.

(v) For quashing the letter 135 dated 24.02.2023 whereby and where under respondent authorities without considering the fact that now the work cannot be performed at old rate since more than 5 years have passed and still entire land for carrying out the work is not available pursuant to agreement work could not be performed and under coercion authorities are pressurizing the petitioner and are taking steps for resigning the agreement and also taking steps for debarring /black listing of the petitioner.

(vi) For restraining the respondent authorities from taking any coercive action as against the



petitioner pursuant to agreement no. 01 SBD/2017-18

(vii) For making payment of entire amount of the work done by the petitioner along with penal interest from date it became dues till actual date of payment.

(viii) For making payment of cost of litigation taking into consideration the fact that due to malicious and biased attitude of the respondent authorities and petitioner has been compel to approach before this Hon'ble court.”

3. Learned counsel appearing on behalf of the petitioner has stated that pursuant to the agreement entered between the petitioner and the respondents vide Agreement No. 01 S.B.D./2017-18 dated 06.11.2017. The petitioner was entrusted to do the Earth Work and Structure In Kashri Distributary from R.D. 0.00 to 22.225. That after the agreement was entered, the petitioner has deployed men, machinery and carried out the work in full swing. That even though the work order was for R.D. 00.00 to 22.225, the required land which was to be excavated, was not acquired by the authorities. However, the petitioner has completed the works where the land was acquired. That due to the non-acquisition of land the petitioner could not complete the works and to that effect the petitioner has made several requests to the authority concerned for acquiring the balance area of land so as to enable him to complete the work. That the authority concerned on the representation made by the petitioner have visited the subject



site and held a meeting on 11.06.2019 and conclusion was reached that in absence of acquisition of the required land, the completion of the works as per the agreement was not possible and to that effect the Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur vide Letter No. 2584 dated 26.11.2019 has recommended to the Superintendent Engineer, Planning and Monitoring Circle 3, Water Resources Department, Bihar, Patna. That even subsequently the land was not acquired and in the meeting dated 19.02.2020 and 20.02.2020 which was headed by the Departmental Minister, Irrigation Department, a unanimous decision about foreclosing the agreement entered between the parties was taken. The said decision was taken duly taking into consideration the fact that the balance area of the land was not acquired and, therefore, the works could not be completed. The above said resolution which has taken place was communicated vide Memo No. 157 dated 04.03.2020. That the petitioner has been making several grounds for taking the final measurement of work pursuant to the above Memo dated 04.03.2020 bearing No. 157 and to that effect the petitioner has issued Letter No. 153 dated 06.03.2020. Thereafter, the final measurement was done by the concerned Executive Engineer vide Letter No. 168 dated 16.03.2020 and in



turn has recommended for foreclosure of the agreement. Pursuant to the said letter the same was forwarded by the Superintendent Engineer, Irrigation Circle, Bhagalpur to the Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur vide Letter No. 296 dated 20.03.2020 and the Chief Engineer concerned has forward the letter to the Superintending Engineer Planning and Monitoring, Circle -3, Water Resources Department, Bihar, Patna vide Letter No. 634 dated 22.04.2020. That though the decision has been taken by the highest authority i.e. a concerned minister of the Department for foreclosing the agreement the authorities have not been making payment of the works done by the petitioner and also for the refund of the amounts which were deducted and refund of security deposit. The authority concerned have only been communicating the request made by the petitioner from one department to another but have being not taking any steps to make the necessary payment. That vide Letter No. 139 dated 24.02.2023 which has been issued by the Executive Engineer, Ganga Pump Canal Division, Shivnarayanpur, Bhagalpur, the authorities have intimated to the petitioner about the non-completion of the work and taking penal action against the petitioner. Though it was clarified to the authority concerned



that the balance remaining work cannot be completed by the petitioner due to escalation of the prices, the imposition of GST as per the new GST Act, escalation of the cost of labour and materials and therefore, it was not possible to complete the work at the old rates, the authorities have issued the impugned letter seeking to take penal action against the petitioner. Learned counsel has stated that the agreement was entered in the year 2017 and the period of completion was one year. However, due to the reasons which were beyond the control of the petitioner the work could only be completed for the areas for which the land was acquired and, thereafter, the authorities duly taking into consideration the fact that the balance area of the land was not acquired and the same could not be completed, have taken a decision to foreclose the agreement way-back in the year 2020 itself. Contrary to the said decision, the authorities for the first time in the year 2023 have directed the petitioner to complete the works on the pretext that the required land was already acquired. Learned counsel has stated that due to the inaction of the respondents in acquiring the land within the stipulated time the petitioner cannot be found fault with and penalized for the actions of the respondents. Therefore, the learned counsel for the petitioner has prayed this Court to allow the present writ



petition and direct the authority concerned to act on the Letter bearing No. 157 dated 04.03.2020 and make the necessary payments. Learned counsel has stated that the petitioner cannot be blamed for the lapses committed by the authorities in not acquiring the full stretch of land for which the agreement has been entered.

4. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the petitioner has not started the work for which the contract was given. That the petitioner has violated the terms and conditions of the contract. Learned counsel has stated that though the authorities have issued several reminders to the petitioner to complete the work within the stipulated time, the petitioner has not done the same. That in spite of providing several opportunities, the petitioner did not complete the work. Learned counsel has stated that even though several requests have been made to the petitioner to complete the work, the petitioner has not taken any steps to start the work, no effort was made to expedite the work and employ more technical staff on the work-site so that the milestone of the work could be achieved. That on inspection of the work-site it was found that the work progress made by the



petitioner was very slow as no technical staff/ manpower were deployed at the work-site. Even though the petitioner has been granted extension of time till 30.06.2019, the petitioner did not start any work even within the extended time period. Learned counsel has stated that though initially the entire stretch of land was not acquired by the authority concerned, subsequently the same was acquired and the petitioner was put on notice, however, the petitioner has not responded to the letters written by the authority concerned for completing the work. Therefore, the authority concerned left with no other option, had to issue the impugned notice directing the petitioner to either complete the work or face penal action. That the higher authorities of the Department duly taking into consideration the fact that the land has been acquired has put the petitioner on notice and complete the work. Therefore, the authorities have taken a decision to initiate the necessary legal action against the petitioner for not completing the work as per the terms and conditions of the contract. Learned counsel for the respondents has stated that the petitioner is obligated to complete the work as per the terms and conditions of the agreement entered between the party as the land which is sought to be work done is available. Therefore, learned counsel for the respondents has prayed this Court to



dismiss the present writ petition with costs.

5. As seen from the records, the admitted facts are that an agreement has been entered between the parties for doing the Earth Work and Structure IN Kashri Distributary from R.D. 0.00 to 22.225 between the petitioner and the respondents herein. The said agreement was entered on 06.11.2017. The correspondence between the parties and also a meeting was held on 19.02.2020 and 20.02.2020 which was headed by the Departmental Minister, Irrigation Department.

6. The resolution taken at the said meeting dated 19.02.2020 and 20.02.2020 chaired by the Hon'ble Minister for Irrigation clearly reflects the fact that the required land which was sought to be acquired for the purpose of completing the work was not available even as on that day and therefore a decision was taken at the highest level to foreclose the contract entered between the parties. Subsequently, a letter dated 04.03.2020 bearing Memo No. 157 was also issued to that effect. The fact that the entire stretch of land has not been acquired as of 19.02.2020 by the authorities concerned for completing the work has not been denied by the authorities in the counter affidavit and as can be seen from the record.

7. A perusal of the correspondence as well as the para



14 of the counter affidavit reads as under:-

“That vide Letter No. 168 dated 16.03.2020, the Executive Engineer, Ganga Pump Canal Division, Shivnarayanpur had recommended for foreclosure of the agreement bearing Agreement No. 01/SBD2017-18 and the same had been communicated to the Superintending Engineer, Irrigation Circle, Bhagalpur as the work progress of the petitioner was very slow as well as difficulty also arose in acquiring the connected land. It is pertinent to mention that the department of deponent had also tried to acquire the land under the provision of Bihar Raiyati Lease Policy 2014 but the concerned farmers had not given their consent for acquiring the connected land.”

8. The above clearly demonstrate that the required land was not acquired and a decision has been taken in a meeting conducted by the Hon'ble Minister for Irrigation on 19.02.2020, 20.02.2020 to foreclose the contract and to that effect the necessary instructions have been given to the concerned subordinate authorities to finalize the book of measurement and submit the same for making the payments to the petitioner. Even though in the counter affidavit it is stated that subsequently the required land has been acquired and to that effect that the petitioner has been put on notice. It is pertinent to note that the said correspondence is only of the year 2023. Once a decision has been taken by the authority concerned to foreclose the contract in the year 2020, the authorities cannot



expect the petitioner to complete the works after a lapse of more than three years. The petitioner cannot be expected to complete the works after a lapse of three years as per the terms of the agreement due to escalation of the costs, materials and other instrumental charges. Moreover, as rightly pointed out by the petitioner that the contract which was entered between the party had included the VAT whereas as per the present regime, the GST is invoked and the petitioner cannot be put to loss by asking him to pay the GST for a contract which was entered keeping in mind the rates which included the VAT.

9. Once a decision has been taken at the highest level the subordinate authorities are expected to implement the decision taken by the minister concerned in a meeting held on 19.02.2020, 20.02.2020 and implement the same in true letter and spirit. The contention of the respondents that the petitioner has not turned up for finalizing the measurement also cannot be believed as the correspondence between the parties is otherwise the correspondence between the parties demonstrates that finalization of the measurement has already been done and necessary payments were to be made by the authorities concerned. The Judgement relied by the petitioner applies in all fours to the present writ petition. It is necessary to extract the



decision relied by the petitioner wherein it was held as under:-

“It is clear from the facts of the case that the agreement entered into between the parties became impossible to perform as well as unlawful and, thus, amounted to frustration of the same. No-doubt provisions of Section 56 of the Contract Act, 1872, as quoted above, does not cover every case of frustration but it applies to a subsequent unforeseen event or contingency for which, neither of the parties is responsible. Giving regard to the nature and circumstances of the transaction and implied terms, no-doubt is cast in the present case that the performance of the contract on the part of the petitioner became an impossibility and such impossibility can be brought within the fold of “force-majeure”.

10. The petitioner cannot be blamed or penalized for the inaction of the authorities to acquire the land necessary for completing the works for which the contract has being entered. The contract has become frustrated due to efflux of time and the petitioner cannot be pressurized to complete the works at the old rates when this is an escalation in the cost of labour, material and other charges besides imposition of GST as per the new tax regime.

11. Having regard to the above mentioned facts and circumstances, the present writ petition is allowed and the authorities are directed to complete the finalization of the measurement book if not already done and make the necessary payments to the petitioner as expeditiously as possible



preferably within a period of eight weeks from the date of the receipt of the copy of this order.

12. With the above directions, the present writ petition stands allowed to the extent indicated above, however, without costs.

(A. Abhishek Reddy , J)

Shakir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.01.2024
Transmission Date	NA

